



Costs Decision

Hearing held on 5 July 2023

Site visit made on 6 July 2023

by C Dillon BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th July 2023

Costs application in relation to Appeal Ref: APP/P2935/W/23/3318070 Land west of Lancaster Park, Pinewood Drive, Lancaster Park, Morpeth, Northumberland NE61 3RT

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Euro Garages Ltd for a full award of costs against Northumberland County Council.
 - The appeal was against the refusal to grant approval of details of scale, appearance, layout and landscaping required by condition No 3 of outline planning permission 16/00078/OUT and described as development of Phase 1 of proposals which include trunk road service area, hotel and innovation centre plus associated access, parking, landscaping and other associated infrastructure.
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Decision

1. The application for a full award of costs is allowed in the terms set out below.

The submissions for Euro Garages Limited

2. The costs application was submitted in writing against Northumberland County Council ("the Council").
3. The applicant firmly believes that the design related concerns cited in the decision notice are not a genuine reason for refusal ("RFR"). Rather, it is the Planning Committee Members' perception that the reserved matters application ("the RMA") fails to deliver on the Council's objectives regarding the provision of an innovation centre which is an unconditioned component of the parent outline permission. The applicant asserts that the RFR was 'cobbled together' by the Officers as there were no objections based on design and neither were any such concerns raised by the Members during the committee's debate. They believe that the RFR cited on the decision notice was in response to Officer concern that the Members' real concerns would be an unlawful RFR and would be exposed as such at appeal.
4. The applicant considers that throughout the appeal the Council has sought to advance that true concern and, believes that despite the Council's concession, that approach remains evident in its costs rebuttal. The applicant also asserts that the Council has had no case to present as regards layout, scale and appearance and considers that the Hearing exposed that.
5. The applicant considers that the participating Officers have behaved unreasonably by running arguments which suggested that the RMA had not been discussed and agreed between the main parties through a process of iteration.

6. My attention has been drawn to the Council's confirmation, provided during the Hearing, that the committee report was endorsed by some of the participating Officers. As such, the applicant considers that it is unreasonable for those Officers to have argued a case that is diametrically opposed to their own professional opinion which is set out in the relevant committee report. In addition, the applicant points out that council officers are not advocates and cannot argue a case on behalf of Members regardless of whether or not they agree with it.
7. The applicant considers that the Council has acted unreasonably in refusing the RMA and this has led to costs being unnecessarily incurred in the making of their appeal. They consider that a full award of costs is justified, but that in the alternative there should be a partial award of costs insofar as they have had to spend time both in preparation and at the Hearing addressing the Council's claim that approval should be withheld on the basis of inconsistency with the outline permission.

The response by Northumberland County Council

8. The response to the costs application was made in writing. In doing so, the Council emphasises that contrary to the applicant's interpretation, there is a single RFR, which relates purely to layout, scale and appearance with reference to design. The Council states that the RFR is not on the basis of inconsistency with the outline permission and considers that its evidence does not seek to present any such arguments. Rather, it states that the decision notice could have provided greater clarity.
9. The Council firmly disagrees that the reason for refusal relates to a failure to condition or resolve issues when the parent permission was granted. It also states that because the description of the parent planning permission expressly refers to the use as an 'innovation centre' there was no requirement to condition that purpose. As that purpose was detailed by the applicant of the parent application and was accepted in the officer report the Council maintains that logically the innovation centre component should follow through to the reserved matters.
10. The Council disagrees that its evidence has conflated what Members expected at the reserved matters stage and what the parent permission required. It states that the committee meeting minutes referred to by the applicant is a reflection of the nature of questions raised between Members and Officers and is not a verbatim reflection of the debate and reasons proposed for the refusal of the RMA.
11. The Council maintains that the application was given all due and proper consideration by the Members of the Planning Committee who voted for a refusal based on layout, appearance and scale; a legally sound reason supported by policy justification. In doing so, the Council states that it has not behaved unreasonably resulting in unnecessary or wasted expense, as described in the PPG, in refusing the RMA and requests that the application for costs be dismissed in full.

Reasons

12. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance ("the PPG") advises that costs may be awarded

against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

13. The appeal has arisen from a decision taken against the recommendation contained in the Council's Officer Report. That in itself is not unreasonable behaviour, providing that it does not go beyond the scope of the reserved matters under determination, is lawful in all other respects and is substantiated on planning grounds.
14. The Council validated the RMA, an indication that Officers had accepted that the RMA is consistent with its parent permission. The Committee Report correctly addressed this issue in detail, seeking to ensure that Members did not err in law when making their decision.
15. Had Committee Members had genuine cause to reject the Officer stance on the validity of the RMA before them, then they could have declined to determine the application on validity grounds, and the applicant would have had a right of appeal against that position. They did not do that.
16. Crucially the recorded committee minutes indicate that the Committee Members were opposed to the RMA because they believed that it did not accord with what was shown on the non-conditioned, illustrative masterplan. In the interests of transparency in decision making, the Council's explanation of the scope and role of minutes taken is very concerning.
17. Consequently, the poor transparency in the minutes, content of the Council's appeal statement and the Officers' verbal submissions meant that it was essential for me to seek clarification on the scope of the RFR cited on the Council's decision notice. Indeed this led to the refinement of both the main issue and my questioning during the hearing.
18. The ambiguity which the RFR presents has been accepted by the participating Officers. In doing so, they confirmed that in stating the RMA 'is substantially altered from the approved outline planning application 16/00078/OUT', the RFR should have been clearer that this was in terms of design matters only. Significantly however, the design related matters of layout, scale and appearance were clearly reserved for future consideration and the parent consent was not legally bound to that masterplan. The explanation provided does not sit comfortably with that fact.
19. During the hearing and within the Council's costs rebuttal I detected undertones of what the applicant has described as a 'compare and contrast approach' on the Council's part with what is contained in the unconditioned masterplan and agent's covering letter submitted at the outline stage.
20. This combined with the ambiguity of the RFR, and the content of the committee report, the committee meeting minutes and Council's appeal statement all mean that it is not unreasonable to have read and interpreted the RFR as being worded in the context of everything that has gone before the decision on the RMA regarding the concerns about its consistency with the parent permission and perceived failure to deliver on the Council's expectations, which formed part of the very special circumstances that justified the development. The fact that the reserved matters scheme differs from what was put forward at the outline stage does not necessarily make it unacceptable, regardless of its

description, as those matters were not bound by any conditions or legal agreement that would influence the treatment of the reserved matters before me.

21. Significantly, as part of this appeal, it was for the Council to explain what is unacceptable about the layout, scale and appearance as proposed. The case which was put forward was ambiguous, poorly evidenced, unsubstantiated and unconvincing.
22. In terms of the applicant's criticisms of the participating Officers, the Officers confirmed that the case had subsequently been the subject of a peer review and they were aware of their professional codes. On that basis they were comfortable in participating in the hearing and defending the RFR in the absence of any other representatives. I am satisfied that in doing so, although an unenviable position, they were careful not to prejudice their own professional integrity. I do not agree that the Officers sought to underplay the discussions which had taken place throughout the course of the application process. Rather, in light of the discussions that had clearly taken place during the determination period, it is telling that such an unenviable position clearly seriously confined the scope and strength of the case that they were able to present.
23. Overall, the evidence before me and what I discerned from the hearing session indicates to me that, at worst, the genuine driver for the Council's decision could have been Committee Members' perception, dissatisfaction and disappointment that the RMA fell short of what was anticipated at the outline stage. At best, it could have been a very frail assessment of these reserved matters by Committee Members which caused the unsubstantiated outcome for the appellant. Crucially, even at best, such action has delayed development that I have found is abundantly acceptable.
24. For the reasons given above, unreasonable behaviour of the Members of the Planning Committee, which resulted in unnecessary and wasted expense, has occurred and a full award of costs is therefore warranted in this instance.

Costs Order

25. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Northumberland County Council shall pay to Euro Garages Limited, the full costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
26. The applicant is now invited to submit to Northumberland County Council to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

C Dillon

INSPECTOR